

CONDUCTING CORPORATE BUSINESS AND MEETINGS UNDER THE NEW IOWA BUSINESS CORPORATION ACT

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I. INTRODUCTION

The new Iowa Business Corporation Act ("Act") became effective December 31, 1989.¹ The new Act replaced the Iowa Business Corporation Act,² and was modeled after the Revised Model Business Corporation Act ("RMBCA") adopted by the Committee on Corporate Laws of the American Bar Association.³ In drafting the Iowa Act, the Corporation and Business Law Committee of the Iowa State Bar Association operated under the primary assumption that any deviation from the language of the RMBCA had to be justified by compelling reasons.⁴ Thus, the new Act closely parallels the RMBCA.

1. IOWA CODE ch. 490 (1991).

2. Iowa Business Corp. Act, ch. 321, 1959 Iowa Acts 344 (last codified at IOWA CODE ch. 496A (1989) (repealed 1989)).

3. The Committee on Corporate Laws of the American Bar Association adopted the RMBCA in 1984. MODEL BUSINESS CORP. ACT ANN. introduction, at xxiii (1991). The Committee is a subcommittee of the Corporation, Banking, and Business Law division of the American Bar Association. *Id.*

4. This assumption will provide the Iowa corporation community with the ability to more precisely ascertain the meaning and intent of the statutory provisions. The official

This Article provides a general overview of corporate business under the new Act, and examines the differences in the conduct of corporate business under the new Act in contrast to the old Iowa Business Corporation Act.⁵ This Article also examines those areas in which the Iowa Business Corporation Act deviates from the RMBCA with respect to business and meetings.

II. SHAREHOLDERS' MEETINGS

The rules governing shareholders' meetings are straightforward. Considerable uniformity exists from state to state in the statutory requirements. There is little, if any, substantive change in the new Act⁶ from the corresponding provisions of the former Iowa Business Corporation Act.⁷

A. Annual Meetings

With respect to the annual meeting of shareholders, the new Act⁸ adopts the provisions of the RMBCA without change.⁹ Annual shareholder meetings are mandatory for the purpose of electing directors and conducting other business.¹⁰ The time and place of the annual meeting may be specified in or fixed in accordance with the bylaws,¹¹ and the meeting may be held in or out of the state of Iowa.¹²

comments to the RMBCA and future case law should serve as guidelines for interpreting the new Iowa Business Corporation Act.

5. The old Iowa Business Corporation Act was codified in Chapter 496A of the Iowa Code. Iowa Business Corp. Act, ch. 321, 1959 Iowa Acts 344 (last codified at IOWA CODE ch. 496A (1989) (repealed 1989)).

6. IOWA CODE ch. 490 (1991).

7. Iowa Business Corp. Act, ch. 321, 1959 Iowa Acts 344 (last codified at IOWA CODE ch. 496A (1989) (repealed 1989)).

8. Iowa Code section 490.701 provides:

1. A corporation shall hold annually, at a time stated in or fixed in accordance with the bylaws, a meeting of shareholders.

2. Annual shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated in or fixed in accordance with the bylaws, annual meetings shall be held at the corporation's principal office.

3. The failure to hold an annual meeting at the time stated in or fixed in accordance with a corporation's bylaws does not affect the validity of any corporate action.

IOWA CODE § 490.701 (1991).

9. MODEL BUSINESS CORP. ACT ANN. § 7.01 (1991).

10. IOWA CODE § 490.701 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 7.01 comment (1991).

11. MODEL BUSINESS CORP. ACT ANN. § 7.01 comment (1991).

12. *Id.*

The Act, however, differs from the former Iowa act with respect to the annual meeting of shareholders.¹³ The new Act specifically provides that "failure to hold an annual meeting . . . does not affect the validity of any corporate action" or the continued existence of the corporation, and it does not affect the incumbency of directors.¹⁴ Prior Iowa law did specify the effect of failure to hold an annual meeting.¹⁵

B. Special Meetings

The new Act incorporates without change the provisions of the RMBCA¹⁶ regarding special meetings of shareholders.¹⁷ All meetings, other than the annual meeting, are called special meetings. Such meetings may be called by the board of directors, the person or persons authorized under the articles or bylaws, or the holders of at least ten percent of the votes entitled to be cast at the meeting.¹⁸

Special shareholders' meetings may be held in or out of the state of Iowa.¹⁹ If a specific place is not stated in the notice or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal

13. Iowa Business Corp. Act, ch. 321, § 27, 1959 Iowa Acts 344, 356 (last codified at IOWA CODE § 496A.27 (1989) (repealed 1989)).

14. IOWA CODE § 490.701 (1991).

15. Iowa Business Corp. Act, ch. 321, § 27, 1959 Iowa Acts 344, 356 (last codified at IOWA CODE § 496A.27 (1989) (repealed 1989)).

16. MODEL BUSINESS CORP. ACT ANN. § 7.02 (1991).

17. IOWA CODE § 490.702 (1991). This section provides:

1. A corporation shall hold a special meeting of shareholders either:
a. On call of its board of directors or the person or persons authorized to call a special meeting by the articles of incorporation or bylaws.

b. If the holders of at least ten percent of all the votes entitled to be cast on any issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's secretary one or more written demands for the meeting describing the purpose or purposes for which it is to be held.

2. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to demand a special meeting is the date the first shareholder signs the demand.

3. Special shareholders' meetings may be held in or out of this state at the place stated in or fixed in accordance with the bylaws. If no place is stated or fixed in accordance with the bylaws, special meetings shall be held at the corporation's principal office.

4. Only business with the purpose or purposes described in the meeting notice required by section 490.705, subsection 3, may be conducted at a special shareholders' meeting.

Id.

18. *Id.* § 490.702(1); see also MODEL BUSINESS CORP. ACT ANN. § 7.02 comment (1991).

19. IOWA CODE § 490.702(3) (1991).

office.²⁰ "Only business within the purpose or purposes described in the meeting notice may be conducted at a special shareholders' meeting."²¹

C. Court-Ordered Meeting

The provisions of the RMBCA regarding court-ordered shareholder meetings²² were adopted without change.²³ Once a shareholder applies for a meeting, the district court of the county in which a corporation's principal office is located may order a shareholders' meeting.²⁴ If no principal office exists in Iowa, the district court of the county in which the corporation's registered office is located may order the meeting.²⁵ Any shareholder may apply for such meeting if "an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting."²⁶ This is a change from the former Iowa statute, which permitted a court-ordered annual meeting if one was not held within eighteen months.²⁷

The district court also may order a special shareholder meeting based on the application of a shareholder who signed a demand for the meeting.²⁸ A court order will issue in either of two instances. First if "[n]otice of the

20. *Id.*

21. *Id.* § 490.702(4).

22. MODEL BUSINESS CORP. ACT ANN. § 7.02 (1991).

23. IOWA CODE § 490.703 (1991). Section 490.703 provides:

1. The district court of the county where a corporation's principal office, or, if none in this state, its registered office, is located may summarily order a meeting to be held either:

a. On application of any shareholder of the corporation entitled to participate in an annual meeting if an annual meeting was not held within the earlier of six months after the end of the corporation's fiscal year or fifteen months after its last annual meeting.

b. On application of a shareholder who signed a demand for a special meeting valid under section 490.702 if either:

(1) Notice of the special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary.

(2) The special meeting was not held in accordance with the notice.

2. The court may fix the time and place of the meeting, ascertain the shares entitled to participate in the meeting, specify a record date for ascertaining shareholders entitled to notice of and to vote at the meeting, prescribe the form and content of the meeting notice, fix the quorum required for specific matters to be considered at the meeting or direct that the votes represented at the meeting constitute a quorum for action on those matters, and enter other orders necessary to accomplish the purpose or purposes of the meeting.

Id.

24. *Id.* § 490.703(1).

25. *Id.*

26. *Id.* § 490.703(1)(a).

27. Iowa Business Corp. Act, ch. 321, § 27, 1959 Iowa Acts 344, 356 (last codified at IOWA CODE § 496A.27 (1989) (repealed 1989)).

28. IOWA CODE § 490.703(1)(b) (1991).

special meeting was not given within thirty days after the date the demand was delivered to the corporation's secretary."²⁹ Second, the court order will issue if "[t]he special meeting was not held in accordance with the notice."³⁰

D. Action Without a Meeting

A written consent describing the action taken and signed by shareholders who have at least ninety percent of the votes that can be cast at a meeting, "at which all shares entitled to vote on the action were present and voted," is as valid as an action taken at a shareholders' meeting.³¹ To be effective, a written consent must be delivered to the corporation within sixty days of the earliest consent delivered.³² This is a significant change from the former Iowa statute, which required unanimous shareholder consent to take action without a meeting.³³

The Act also differs from the RMBCA with respect to action taken without a meeting. While subsections three, four, and five of section 490.704 of the Act adopt specific provisions of the RMBCA,³⁴ subsections one, two, and six of section 490.704³⁵ are patterned after Delaware General Corporation Law section 228.³⁶

29. *Id.* § 490.703(1)(b)(1).

30. *Id.* § 490.703(1)(b)(2).

31. *Id.* § 490.704(1).

32. *Id.* § 490.704(2).

33. Iowa Business Corp. Act, ch. 321, § 140, 1959 Iowa Acts 344, 407 (last codified at IOWA CODE § 496A.140 (1989) (repealed 1989)).

34. Iowa Code section 490.704, subsections three, four, and five provide:

3. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection 1.

4. A consent signed under this section has the effect of a meeting vote and may be described as such in any document.

5. If this chapter requires that notice of proposed action be given to shareholders not entitled to vote and the action is to be taken by consent of the voting shareholders, the corporation must give all shareholders written notice of the proposed action at least ten days before the action is taken. The notice must contain or be accompanied by the same material that, under this chapter, would have been required to be sent to shareholders not entitled to vote in a notice of meeting at which the proposed action would have been submitted to the shareholders for action.

IOWA CODE § 490.704(3)-(5) (1991).

35. Iowa Code section 490.704, subsections one, two, and six provide:

1. Unless otherwise provided in the articles of incorporation, any action required or permitted by this chapter to be taken at a shareholders' meeting may be taken without a meeting or vote, and, except as provided in subsection 5, without prior notice, if one or more written consents describing the action taken are signed by the holders of outstanding shares having not less than ninety percent of the votes entitled to be cast at a meeting at which all shares entitled to vote on the action were present and voted, and are delivered to the corporation for inclusion in the minutes or filing with the corporate records.

E. Notice of Meetings

The new Act adopts without change the provisions of the RMBCA regarding notice of meetings.³⁷ Shareholders must be given written notice of annual or special meetings at least ten days, but not more than sixty days before the meeting date.³⁸ While the notice need not state the purposes of an

2. A written consent shall bear the date of signature of each shareholder who signs the consent and no written consent is effective to take the corporate action referred to in the consent unless, within sixty days of the earliest dated consent delivered in the manner required by this section to the corporation, written consents signed by a sufficient number of holders to take action are delivered to the corporation. . . .

6. Prompt notice of the taking of corporate action without a meeting by less than unanimous written consent shall be given to those shareholders who have not consented in writing. If taking of that corporate action requires the giving of notice under section 490.1320, subsection 2, the notice of the action shall set forth the matters described in section 490.1322.

Id. § 490.704(1), (2), (6). In contrast, section 7.04(a) of the RMBCA provides:

(a) Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by *all the shareholders entitled to vote on the action*. The action must be evidenced by one or more written consents describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

MODEL BUSINESS CORP. ACT ANN. § 7.04(a) (1991) (emphasis added).

36. See Davis, Harris & Herzl, *Consents to Trouble*, 42 BUS. LAW. 135 (1986); DEL. CODE ANN. tit. 8, § 228 (1991).

37. Iowa Code section 490.705 provides:

1. A corporation shall notify shareholders of the date, time, and place of each annual and special shareholders' meeting no fewer than ten nor more than sixty days before the meeting date. Unless this chapter or the articles of incorporation require otherwise, the corporation is required to give notice only to shareholders entitled to vote at the meeting.

2. Unless this chapter or the articles of incorporation require otherwise, notice of an annual meeting need not include a description of the purpose or purposes for which the meeting is called.

3. Notice of a special meeting must include a description of the purpose or purposes for which the meeting is called.

4. If not otherwise fixed under section 490.703 or 490.707, the record date for determining shareholders entitled to notice of and to vote at an annual or special shareholders' meeting is the close of business on the day before the first notice is delivered to shareholders.

5. Unless the bylaws require otherwise, if an annual or special shareholders' meeting is adjourned to a different date, time, or place, notice need not be given of the new date, time, or place if the new date, time, or place is announced at the meeting before adjournment. If a new record date for the adjourned meeting is or must be fixed under section 490.707, however, notice of the adjourned meeting must be given under this section to persons who are shareholders as of the new record date.

IOWA CODE § 490.705 (1991); see also MODEL BUSINESS CORP. ACT ANN. § 7.05 (1991).

38. IOWA CODE § 490.705(1) (1991).

annual meeting, it must describe the purposes for calling a special meeting.³⁹

If not otherwise fixed by corporate or judicial action, the record date for determining those shareholders entitled to notice is the close of business on the day before the first shareholder notice is delivered.⁴⁰ This provision represents a change from the former Iowa Business Corporation Act, which provided that, unless otherwise established, the record date was the date on which the notice was mailed.⁴¹

Under the new Act, a shareholder may waive notice of a meeting by a written document executed before, at, or after the meeting in question.⁴² Attendance at a meeting by a shareholder waives objection to the notice unless (1) the shareholder objects to the meeting or the business to be addressed when he arrives, or at the beginning of the meeting; or (2) the shareholder objects to a particular issue that was not described in the notice.⁴³ With respect to the waiver of notice, the provisions of the RMBCA were substantially adopted. The only difference is section 490.706(2)(a) of the new Act, which added the words "or promptly upon the shareholder's arrival."⁴⁴

F. Record Date

Persons entitled to vote at a meeting are the record owners of shares on a specific date known as the "record date."⁴⁵ Under the new Act, as well as the RMBCA,⁴⁶ the record date may be fixed in the bylaws.⁴⁷ The board of directors also has the authority to determine the record date.⁴⁸ The record date "shall not be more than seventy days before the meeting or action requiring a determination of shareholders."⁴⁹ Prior Iowa law provided the record date should not be more than sixty days prior to the shareholders' meeting.⁵⁰ The board's "determination of shareholders entitled to notice of a meeting or to vote at a shareholders' meeting is effective for any adjournment of the meeting unless the board of directors fixes a new record

39. *Id.* § 490.705(2), (3).

40. *Id.*

41. Iowa Business Corp. Act, ch. 321, § 29, 1959 Iowa Acts 344, 356 (last codified at IOWA CODE § 496A.29 (1989) (repealed 1989)).

42. IOWA CODE § 490.706(1) (1991).

43. *Id.* § 490.706(2).

44. *Id.*; see also MODEL BUSINESS CORP. ACT ANN. § 706(b)(1) (1991).

45. IOWA CODE § 490.707 (1991).

46. MODEL BUSINESS CORP. ACT ANN. § 7.07(a) (1991).

47. IOWA CODE § 490.707(1) (1991).

48. *Id.*

49. *Id.* § 490.707(2).

50. Iowa Business Corp. Act, ch. 321, § 29, 1959 Iowa Acts 344, 356 (last codified at IOWA CODE § 496A.29 (1989) (repealed 1989)).

date."⁵¹ The board must fix a record date if the meeting is postponed for more than 120 days after the original meeting date.⁵²

III. VOTING, PROXIES, AND QUORUM REQUIREMENTS

A. Shareholders' List for Meeting

Under the provisions of both the RMBCA⁵³ and the new Act,⁵⁴ a corporation must prepare a list of all shareholders entitled to notice of a shareholder meeting.⁵⁵ Such a list must be alphabetical, include the addresses of the shareholders, specify the number of shares held by each shareholder, and designate any voting groups by classes or series of shares.⁵⁶

The corporation must make the shareholders' list available for inspection at its principal office, or at the place identified in the notice as the meeting situs.⁵⁷ Shareholders must be given access to the list at least two business days after notice of the meeting is given.⁵⁸ This provision represents a change from prior Iowa law, which required the shareholders' list to be kept at the corporation's registered office and be available ten days before the shareholders' meeting.⁵⁹

Shareholders of a corporation possess an unlimited right to inspect the shareholders' list under the new Act.⁶⁰ A shareholder, however, may copy the list only if the demand is "made in good faith and for a proper [corporate] purpose."⁶¹ This restriction is intended to protect against possible misuse of a shareholders' list. If the corporation wrongly refuses to allow a shareholder to inspect or copy the list before or at the shareholders' meeting, the shareholder may obtain a summary court order requiring the inspection or copying at the corporation's expense.⁶² In addition, the appropriate district court may postpone the shareholders' meeting until the inspection or copying is completed.⁶³

51. IOWA CODE § 490.707(3) (1991).

52. *Id.*

53. MODEL BUSINESS CORP. ACT ANN. § 7.20 (1991).

54. IOWA CODE § 490.720(1) (1991).

55. *Id.*

56. *Id.*

57. *Id.* § 490.720(2).

58. *Id.*

59. Iowa Business Corp. Act, ch. 321, § 30, 1959 Iowa Acts 344, 357 (last codified at IOWA CODE § 496A.30 (1989) (repealed 1989)).

60. IOWA CODE § 490.720(2) (1991).

61. *Id.* § 490.1602(3)(a); see also MODEL BUSINESS CORP. ACT ANN. § 7.20 comment 5 (1991). The distinction between "inspection" and "copying" reflects an accommodation between competing considerations of permitting shareholders access to the list and possible misuse of the list.

62. IOWA CODE § 490.720(4) (1991).

63. *Id.* Prior Iowa law provided remedies only when a corporation denied the inspection of records. Iowa Business Corp. Act, ch. 321, §§ 30, 47, 1959 Iowa Acts 344, 357, 363-64 (last

B. Voting Entitlement of Shares

The new Act⁶⁴ fully incorporates the provisions of the RMBCA⁶⁵ regarding voting entitlement of shares. Each share provides a right to one vote on each issue addressed at a shareholders' meeting unless the articles of incorporation provide otherwise.⁶⁶

Circular holdings, however, are an exception to the one-share one-vote rule. A circular holding exists when corporation *B* holds shares in corporation *A* and corporation *A* holds a majority of voting shares in corporation *B*.⁶⁷ The corporations involved in the circular holding are prohibited from voting these shares unless they are held by the corporation in a fiduciary capacity.⁶⁸

C. Proxies

The new Act also incorporates without change the provisions of the RMBCA regarding proxies. Under both, a shareholder may appoint a proxy⁶⁹ to vote for the shareholder by simply signing an appointment form.⁷⁰ An appointment is effective when received by the appropriate corporate officer or agent.⁷¹ An appointment is valid for eleven months, unless the appointment form expressly specifies a longer period of time.⁷²

Most proxy appointments are revocable under common law principles of agency. To be irrevocable under the new Act, the appointment form must clearly state that it is irrevocable and it must be coupled with an interest.⁷³

codified at IOWA CODE §§ 496A.30, .47 (1989) (repealed 1989)). Under prior Iowa law, a penalty of ten percent of the value of the shares owned by a shareholder, not to exceed five hundred dollars, could be imposed for bad faith failure to allow inspection of records. *Id.*

64. IOWA CODE § 490.721 (1991).

65. MODEL BUSINESS CORP. ACT ANN. § 7.21 (1991).

66. IOWA CODE § 490.721(1) (1991).

67. *See id.* § 490.721(2).

68. *Id.* The purpose of this prohibition is to prevent management from using corporate investments to perpetuate itself in power. MODEL BUSINESS CORP. ACT ANN. § 7.21 comment, para. 3 (1991).

69. Under the RMBCA, the word "proxy" is defined as the person to whom the power to vote is granted. MODEL BUSINESS CORP. ACT ANN. § 7.22 comment, para. 1 (1991).

70. *Id.* "Appointment form" is used to describe the document appointing the proxy, and the word "appointment" is used to describe the grant of authority to vote.

71. IOWA CODE § 490.722(3) (1991).

72. *Id.*

73. *Id.* § 490.722(4). Examples of appointments coupled with an interest include the appointment of:

- a. A pledgee.
- b. A person who purchased or agreed to purchase the shares.
- c. A creditor of the corporation who extended it credit under terms requiring the appointment.

A proxy is revoked when the interest attached to the appointment is extinguished.⁷⁴

The death or incapacity of a shareholder does not affect the corporation's right to accept the vote of a proxy until the appropriate officer or agent of the corporation receives notice of the shareholder's death or incapacity.⁷⁵ This statute conflicts with general common law principles, which hold that death or incapacity of the appointing shareholder revokes the proxy appointment.⁷⁶

Both the new Iowa Business Corporation Act and the RMBCA fail to specifically address the validity of datagram proxies and telecopied proxies. It is interesting to note, however, that the Delaware General Corporation Law recently was amended to address the issue of datagram and telecopied proxies.⁷⁷ The silence of the new Act coupled with the increased use of such proxies suggests amendments to the Iowa Code will be necessary in the near future.

D. Shares Held by Nominees

The new Act and the RMBCA provide that "[a] corporation may establish a procedure by which the beneficial owner of shares . . . registered in the name of a nominee is recognized by the corporation as the shareholder."⁷⁸ The previous Iowa Business Corporation Act contained no comparable provision.

E. Corporation's Acceptance of Votes

A corporation must rely on written instruments as evidence of shareholder action. However, a corporation and its officers rarely will have per-

d. An employee of the corporation whose employment contract requires the appointment.

e. A party to a voting agreement created under section 490.731.

Id. § 490.722(4)(a)-(e). This list is not exclusive. *Id.*

74. *Id.* § 490.722(6).

75. *Id.* § 490.722(5).

76. This position recognizes that with the widespread dispersal of shareholders in modern corporations, it is not always feasible for a corporation to learn of the death or incapacity of a shareholder unless it receives notice. See MODEL BUSINESS CORP. ACT ANN. § 7.22 comment, para. 3 (1991).

77. DEL. CODE ANN. tit. 8, § 212 (1991). With respect to datagram proxies, the Delaware Code provides a shareholder may grant a proxy by telegram, cablegram, or other means of electronic transmission, provided that such transmission sets forth or is submitted with information from which it can be determined that it was authorized by the shareholder. *Id.* With respect to telecopied proxies, the Delaware Code permits copies, facsimile telecommunications, or reproductions of proxies to be used for any purpose for which an original proxy could be used. *Id.*

78. IOWA CODE § 490.723 (1991); see also MODEL BUSINESS CORP. ACT ANN. § 7.23 comment (1991).

sonal knowledge of the circumstances under which the instrument was executed, and will not possess any method of verifying whether the signature on the instrument is the shareholder's signature. For this reason, the drafters of the RMBCA sought to establish general rules permitting corporations to accept instruments "if they appear to be executed by the shareholder or by a person who has authority to execute the instrument for the shareholder and they are accompanied by whatever authenticating evidence the corporation reasonably requests."⁷⁹ The drafters of the new Act adopted these rules without change.⁸⁰

These rules provide that the name on a vote, consent, waiver, or proxy appointment is the name of a shareholder.⁸¹ The corporation must act in good faith and may accept the instrument.⁸² Similarly, a corporation may accept an instrument signed by a person other than the shareholder if there is evidence the person executing the instrument is acting on behalf of the shareholder.⁸³

The corporation also may reject an instrument if there is a reasonable basis for doubt regarding the validity of the signature or the authority of the person acting on behalf of the shareholder.⁸⁴ The corporation is not liable to the shareholder if it accepts an instrument in good faith and it turns out the execution was invalid or unauthorized.⁸⁵ Similarly, the corporation is not liable if in good faith it rejects an instrument that was properly executed.⁸⁶ The statute is designed to protect the corporation, its officers, and agents from liability to shareholders when action is taken in accordance with its provisions.⁸⁷

F. *Quorum and Voting Requirements for Voting Groups*

A quorum of shares entitled to vote as a separate voting group⁸⁸ must exist for the group to vote on a matter presented.⁸⁹ A majority constitutes a

79. MODEL BUSINESS CORP. ACT ANN. § 7.24 comment (1991).

80. IOWA CODE § 490.724 (1991).

81. *Id.* § 490.724(1).

82. *Id.*

83. *Id.* § 490.724(2).

84. *Id.* § 490.724(3).

85. *Id.* § 490.724(4).

86. *Id.*

87. MODEL BUSINESS CORP. ACT ANN. § 7.24 comment (1991). The official comment also sets forth examples of execution of instruments "which correspond with the name of the shareholder," examples of executions that "indicate the capacity of the person signing," and examples of "reasonable basis for doubt." *Id.*

88. "Voting Group" is defined as:

[A]ll shares of one or more classes or series that under the articles of incorporation or this chapter are entitled to vote and be counted together collectively on a matter at a meeting of shareholders. All shares entitled by the articles of incorporation or this chapter to vote generally on the matter are for that purpose a single voting group.

quorum unless the articles of incorporation provide otherwise.⁹⁰ The articles of incorporation can set any number or percentage of shareholders as a quorum.⁹¹ Prior Iowa law required a quorum of at least one-fourth of the shares entitled to vote on a matter presented.⁹²

A share represented at a meeting is deemed to be present, for quorum purposes, throughout the meeting.⁹³ Action taken on a matter is approved if a voting group casts more votes in favor of the action than in opposition.⁹⁴ Such a vote, however, must occur at a meeting in which a quorum exists.⁹⁵ Prior Iowa law required the vote of a majority of the shares represented for approval of an action.⁹⁶ Under section 490.725, abstentions are not treated as negative votes, and action can be taken by a majority of those voting on the matter in question.⁹⁷

G. Action by Single or Multiple Groups

After a single voting group votes on a matter, action is taken according to section 490.725.⁹⁸ If more than one voting group is entitled to vote on a matter, action is taken only when it is voted on favorably by each voting group.⁹⁹ Each group must be counted separately.¹⁰⁰

H. Greater Quorum or Voting Requirements

The articles of incorporation may specify a greater quorum or voting requirements for shareholder approval of an action.¹⁰¹ Prior Iowa law required a quorum of at least one-fourth of the shares.¹⁰² Under the new Act, however, any amendment that adds, changes, or deletes any "supermajority provision" of the articles of incorporation must be approved

IOWA CODE § 490.140(26) (1991).

89. *Id.* § 490.725(1).

90. *Id.*

91. *Id.*

92. Iowa Business Corp. Act, ch. 321, § 31, 1959 Iowa Acts 344, 357 (last codified at IOWA CODE § 496A.31 (1989) (repealed 1989)).

93. IOWA CODE § 490.725(2) (1991).

94. *Id.* § 490.725(3). This provision does not apply to the election of directors, which is governed by section 490.728. *Id.* § 490.728.

95. *Id.* § 490.725(3).

96. Iowa Business Corp. Act, ch. 321, § 31, 1959 Iowa Acts 344, 357 (last codified at IOWA CODE § 496A.31 (1989) (repealed 1989)).

97. See IOWA CODE § 490.725(1) (1991).

98. *Id.* § 490.726; see *supra* text accompanying notes 93-95; see also MODEL BUSINESS CORP. ACT ANN. § 7.25 (1991).

99. IOWA CODE § 490.726(2) (1991).

100. *Id.*

101. *Id.* § 490.727; see also MODEL BUSINESS CORP. ACT ANN. § 7.27 (1991).

102. Iowa Business Corp. Act, ch. 321, § 31, 1959 Iowa Acts 344, 357 (last codified at IOWA CODE § 496A.31 (1989) (repealed 1989)).

by the greater of (1) the proposed quorum and vote requirement, or (2) by the quorum and vote required by the articles of incorporation before their amendment.¹⁰³

I. Voting for Directors: Cumulative Voting

Directors usually are elected by a plurality of the votes cast.¹⁰⁴ Cumulative voting is permitted only if the articles of incorporation contain an affirmative statement such as "[all] . . . shareholders are entitled to cumulate their votes for directors."¹⁰⁵ The new Act deletes a provision of the RMBCA which requires, as a condition of voting shares cumulatively, that "(1) the meeting notice or proxy statement accompanying the notice states . . . that cumulative voting is authorized; or (2) a shareholder who has the right to cumulate votes or gives notice to the corporation not less than 48 hours before the time set for the meeting of his intent to cumulate his votes."¹⁰⁶

J. Voting Trusts and Voting Agreements

Shareholders, pursuant to a written agreement, may create a voting trust that gives a trustee the right to vote or otherwise act for the shareholders.¹⁰⁷ A voting trust is valid for ten years only; however, the trust may be extended for additional terms of not more than ten years each.¹⁰⁸ This provision differs from prior Iowa law, which permitted voting trusts to exist for twenty years.¹⁰⁹

Under the Act, shareholders can agree to vote their shares cooperatively or as a unit.¹¹⁰ To be enforceable, however, the agreement must be in writing and signed by all participating shareholders.¹¹¹ If no enforcement mechanism is provided in the agreement itself, a court may order specific enforcement and direct the votes to be cast as the agreement contemplates.¹¹²

103. IOWA CODE § 490.727(2) (1991).

104. *Id.* § 490.728(1). The articles of incorporation may provide otherwise. *Id.*

105. *Id.* § 490.728(2)-(3).

106. MODEL BUSINESS CORP. ACT ANN. § 7.28(d) (1991).

107. IOWA CODE § 490.730(1) (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 7.30 (1991).

108. IOWA CODE § 490.730(2)-(3) (1991).

109. Iowa Business Corp. Act, ch. 821, § 33, 1959 Iowa Acts 344, 358 (last codified at IOWA CODE § 496A.33 (1989) (repealed 1989)). For a detailed analysis of the enforceability of certain provisions of a voting trust under Iowa law, *see* Watts v. Des Moines Register & Tribune, 525 F. Supp. 1311 (S.D. Iowa 1981).

110. IOWA CODE § 490.731 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 7.31 (1991).

111. IOWA CODE § 490.731 (1991).

112. *Id.* § 490.731(2). This provision avoids the result reached in Ringling Bros.-Barnum & Bailey Combined Shows, Inc. v. Ringling, 53 A.2d 441 (Del. 1947). In *Ringling*, the court held the appropriate remedy to enforce a pooling agreement was to refuse to permit any voting of the breaching party's shares. Ringling Bros.-Barnum & Bailey Combined Shows,

A voting agreement is not subject to the ten-year limitation applicable to voting trusts.¹¹³

IV. DERIVATIVE PROCEEDINGS

The new Act allows a plaintiff to maintain a derivative suit.¹¹⁴ The plaintiff must be either a registered owner or a beneficial owner of shares held by a nominee on his behalf at the time the transaction complained of occurred.¹¹⁵ The inclusion of a beneficial owner as a party with standing to maintain a derivative action differs from prior Iowa law, which limited the definition of a shareholder to the holder of record of shares in the corporation.¹¹⁶

A complaint in a derivative proceeding must be verified, and must allege with particularity that a good faith effort was made to first obtain action by the board of directors.¹¹⁷ Thus, a demand on the directors may be a prerequisite to maintaining a derivative action unless there is an adequate showing that a demand on the board of directors would be useless.¹¹⁸ Regardless of whether the plaintiff makes a demand on the board of directors, the corporation's commencement of an investigation of the charges may permit a court to stay any proceeding until the investigation is completed.¹¹⁹

Inc. v. Ringling, 53 A.2d 441 (Del. 1947). The effect was to defeat the purpose of the agreement because the disqualified shares were essential for control of the corporation.

113. IOWA CODE § 490.731 (1991). This section excepts voting agreements from section 490.730 of the Iowa Code. *Id.*

114. A derivative suit is an action brought by one or more shareholders in a representative capacity on a cause of action that belongs to the corporation. *See Cunningham v. Kartridg Pak Co.*, 332 N.W.2d 881, 883 (Iowa 1983). A derivative suit is usually intended to remedy a wrong to the corporation rather than to the shareholders personally. *Id.*

115. IOWA CODE § 490.740(1)-(5) (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 7.40 (1991). The Committee on Corporate Laws of the Section of Corporation, Banking, and Business Law of the American Bar Association has recently re-examined the subject of derivative proceedings and has proposed new sections 7.40 through 7.47 in substitution for section 7.40 of the RMBCA. *See* ABA Comm. on Corporate Laws, *Changes in the Model Business Corporation Act—Amendments Pertaining to Derivative Proceedings*, 44 BUS. LAW. 543 (1989).

116. Iowa Business Corp. Act, ch. 321, § 43, 1959 Iowa Acts 344, 361 (last codified at IOWA CODE § 496A.43 (1989) (repealed 1989)).

117. IOWA CODE § 490.740(2) (1991).

118. *See Aronson v. Lewis*, 473 A.2d 805 (Del. 1984). Although a demand on the shareholders is not required by the RMBCA or the new Iowa Business Corporation Act, Federal Rule of Civil Procedure 23.1 requires that demand on the shareholders be made if necessary. *See also* MODEL BUSINESS CORP. ACT ANN. § 7.40 comment f (1991) (requirement of a demand on shareholders would add uncertainty, expense, and delay without commensurately improving prospects of resolving substantive issues).

119. IOWA CODE § 490.740(2) (1991).

Once a derivative proceeding begins, it shall not be discontinued or settled without judicial approval.¹²⁰ If the impact of any discontinuance or settlement will substantially affect the shareholders, the court shall order notice to be given to all affected shareholders.¹²¹ If a court finds a derivative proceeding was commenced without reasonable cause, the court may require the plaintiff to pay the defendants' reasonable costs in defending the action, including attorney fees.¹²²

V. DIRECTORS AND OFFICERS

A. Directors

1. *Requirements for and Authority of Board of Directors*

The new Act requires every corporation to have a board of directors.¹²³ A corporation with fifty or fewer shareholders, however, may abolish or limit the directors' authority by specifying in the articles of incorporation who will perform some or all of the board's duties.¹²⁴ Although a corporation may set forth in the articles of incorporation limitations on the directors' authority, directors have broad authority to oversee the management of the business and affairs of the corporation.¹²⁵ Directors owe the corporation complete loyalty, honesty, and good faith.¹²⁶

120. *Id.* § 490.740(3).

121. *Id.*

122. *Id.* § 490.740(4). Earlier versions of the RMBCA required a plaintiff shareholder to give the corporation security for the reasonable expenses, including attorney fees, which the corporation and other defendants may have incurred in defending the derivative suit, if the plaintiff's holdings did not reach a specified size or value—five percent of the outstanding shares or a value of \$25,000. The comment to RMBCA section 7.40 explains the decision to eliminate this requirement in part on the ground that "to the extent [the bond] was issued on the size or value of the plaintiff's holdings rather than on the apparent good faith of his claim [the requirement] was subject to criticism that it unreasonably discriminated against small shareholders." MODEL BUSINESS CORP. ACT ANN. § 7.40 comment h (1991).

Although prior Iowa law permitted derivative suits, the provisions of the RMBCA, adopted in Iowa, provide more precise procedures. Iowa Business Corp. Act, ch. 321, § 43, 1959 Iowa Acts 344, 361 (last codified at IOWA CODE § 496A.43 (1989) (repealed 1989)). Important Iowa cases on derivative suits are *Holi-Rest, Inc. v. Treloar*, 217 N.W.2d 517 (Iowa 1974); and *Rowen v. LeMars Mutual Insurance Co.*, 282 N.W.2d 639 (Iowa 1979).

123. IOWA CODE § 490.801(1) (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.01 (1991).

124. IOWA CODE § 490.801(3) (1991).

125. *Id.* § 490.801(2).

126. *See* *Cookies Food Prods., Inc. v. Lakes Warehouse Distributions, Inc.*, 430 N.W.2d 447 (Iowa 1988); *Midwest Management Corp. v. Stephens*, 353 N.W.2d 76 (Iowa 1984). Officers and directors of a corporation are trustees or quasi-trustees of corporate assets and occupy a fiduciary relation to the corporation and its stockholders which requires them to act in the utmost good faith and not for their own personal interest. *Schildberg Rock Prods. Co. v. Brooks*, 258 Iowa 759, 140 N.W.2d 132 (1966).

2. *Qualifications for Directors*

The qualifications for directors may be set forth in the articles of incorporation or bylaws.¹²⁷ Unless so prescribed, a director need not be an Iowa resident or a shareholder of the corporation.¹²⁸

3. *Number and Election of Directors*

The articles of incorporation or bylaws must specify the number or variable range of directors.¹²⁹ The board of directors must consist of at least one individual.¹³⁰ A director must be an individual, not an entity.¹³¹

If the articles of incorporation or bylaws allow the board of directors to fix or change the number of directors, the board cannot increase or decrease the number of directors last approved by the shareholders by more than thirty percent.¹³² This provision differs significantly from prior Iowa law, which allowed the directors to increase or decrease the number of directors by any amount.¹³³ Under the new Act, only shareholders may increase or decrease the number of directors by more than thirty percent.¹³⁴

A variable range for the size of the board may be established "by fixing a minimum and maximum number of directors."¹³⁵ After shares are issued, any change in the range for the size of the board or change from a fixed to a variable-range size board must be approved by the shareholders.¹³⁶

The articles of incorporation may authorize the election of all or a specified number of directors by the holders of one or more authorized classes of shares.¹³⁷ If so, each class constitutes a separate voting group for the purpose of the election.¹³⁸

127. IOWA CODE § 490.802 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.02 (1991).

128. IOWA CODE § 490.802 (1991).

129. *Id.* § 490.803(1); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.03 (1991).

130. IOWA CODE § 490.803(1) (1991).

131. *See id.* § 490.140(13).

132. *Id.* § 490.803(2).

133. Iowa Business Corp. Act, ch. 321, § 35, 1959 Iowa Acts 344, 359 (last codified at IOWA CODE § 496A.35 (1989) (repealed 1989)).

134. IOWA CODE § 490.803(2) (1991).

135. 1991 Iowa Legis. Serv. 728 (West) (to be codified at IOWA CODE § 490.803(3) (1993)).

136. *Id.*

137. IOWA CODE § 490.804 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.04 (1991).

138. IOWA CODE § 490.804 (1991).

4. *Terms of Directors*

The terms of directors expire at the next annual shareholders' meeting following their election, unless their terms are staggered.¹³⁹ The terms of initial directors end at the first shareholders' meeting at which they were elected.¹⁴⁰ An incumbent director's term cannot be shortened by a decrease in the number of directors.¹⁴¹ Furthermore, a director serves until a successor is elected or the number of directors is decreased, even if the director's term has expired.¹⁴²

The new Act specifically provides the articles of incorporation may establish staggered terms of two or three years for directors, with each term containing "as near as may be" the same number of directors.¹⁴³ This provision differs from the RMBCA provision allowing for staggered terms only if there are nine or more directors.¹⁴⁴

5. *Resignation of Directors*

A director may resign at any time by "delivering written notice to the board of directors, its chairperson, or to the corporation."¹⁴⁵ The resignation becomes effective when the director delivers the notice.¹⁴⁶ The notice, however, may specify a later resignation date.¹⁴⁷

6. *Removal of Directors*

Unless limited by articles of incorporation, the shareholders of a corporation may remove directors without cause.¹⁴⁸ A director elected by a voting group may be removed only by a vote of that group.¹⁴⁹ A director elected pursuant to cumulative voting may not be removed if the number of votes sufficient to elect the director are cast against the director's removal.¹⁵⁰ Furthermore, directors "shall not be removed pursuant to written

139. *Id.* § 490.805(2); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.05 (1991).

140. IOWA CODE § 490.805(1).

141. *Id.* § 490.805(3).

142. *Id.* § 490.805(4)-(5).

143. *Id.* § 490.806.

144. MODEL BUSINESS CORP. ACT ANN. § 8.06 (1991).

145. IOWA CODE § 490.807 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.07 (1991).

146. IOWA CODE § 490.807(2) (1991).

147. *Id.*

148. *Id.* § 490.808(1).

149. *Id.* § 490.808(2).

150. *Id.* § 490.808(3).

consents under section 490.704 unless written consents are obtained from the holders of all outstanding shares of the corporation."¹⁵¹

The new Act also allows the removal of directors by judicial proceeding.¹⁵² Under these provisions, a court may remove a director in a proceeding brought by either the corporation or shareholders holding at least twenty percent of the outstanding shares of any class of stock.¹⁵³ In contrast, the provisions of the RMBCA allow shareholders holding only ten percent of the outstanding shares of any class of stock to bring a removal action.¹⁵⁴

Judicial removal requires a court to find the director acted fraudulently or dishonestly with regard to the corporation *and* removal would serve the corporation's best interest.¹⁵⁵ The RMBCA includes an additional ground for removal—a finding that a director engaged in a "gross abuse of authority and discretion."¹⁵⁶

7. Vacancy on Board

Vacancies created by resignation, death, or removal of a director may be filled either by the shareholders or the board of directors.¹⁵⁷ The articles of incorporation, however, may provide differently.¹⁵⁸ This provision differs from prior Iowa law, which permitted the election of a director to a vacant position only by a vote of the remaining directors.¹⁵⁹ Vacancies created by resignation, death, or removal of a director elected by a voting group may be filled only by a vote of that voting group.¹⁶⁰ This assumes the vacancy will be filled by shareholders.¹⁶¹

151. 1991 Iowa Legis. Serv. 729 (West) (to be codified at IOWA CODE § 490.808(4) (1993)). Section 490.808(4) was amended during the 1991 session of the Iowa Legislature to provide that the written consents of only those shareholders "entitled to vote on the removal of the director" were necessary. IOWA CODE § 490.808(4) (1991).

152. *Id.* § 490.809.

153. *Id.* § 490.809(1).

154. MODEL BUSINESS CORP. ACT ANN. § 8.09(a) (1991).

155. IOWA CODE § 490.809(1)(a)-(b) (1991).

156. MODEL BUSINESS CORP. ACT ANN. § 8.09(a)(1) (1991).

157. IOWA CODE § 490.810 (1991); *see also* MODEL BUSINESS CORP. ACT ANN. § 8.10 (1991).

158. IOWA CODE § 490.810 (1991).

159. Iowa Business Corp. Act, ch. 321, § 37, 1959 Iowa Acts 344, 359 (last codified at IOWA CODE § 496A.37 (1989) (repealed 1989)).

160. IOWA CODE § 490.810(2) (1991).

161. *Id.*

8. *Compensation of Directors*

The board of directors may fix their own compensation unless otherwise specified in the articles of incorporation or bylaws.¹⁶² This provision effectively codifies the long-standing practices of most Iowa corporations.

B. *Directors' Meetings and Committees*

1. *Meetings*

Directors may hold regular or special meetings in or out of the State of Iowa.¹⁶³ Telephonic meetings of the board of directors are specifically permitted.¹⁶⁴ The new Act fully incorporates the corresponding provisions of the RMBCA.¹⁶⁵

2. *Action Without Meeting*

The board of directors may take action without a meeting if all the directors sign a written consent describing the action taken.¹⁶⁶ Action so taken is effective when the last director signs the consent.¹⁶⁷ A different effective date, however, may be specified in the consent.¹⁶⁸

"The requirement of unanimous consent precludes the possibility of stifling or ignoring opposing arguments."¹⁶⁹ A director opposed to a proposed action, or a director who may want the benefit of discussion, can compel the holding of a directors' meeting simply by withholding consent.¹⁷⁰

3. *Notice of Meeting*

Regular meetings of the board of directors may be held without notice.¹⁷¹ Special meetings may be held with at least two days notice.¹⁷² Notice may be written or oral,¹⁷³ and no statement of the purpose of a special or

162. *Id.* § 490.811.

163. MODEL BUSINESS CORP. ACT ANN. § 8.20 (1991).

164. IOWA CODE § 490.820(1) (1991).

165. *Id.*

166. *Id.* § 490.821; see also MODEL BUSINESS CORP. ACT ANN. § 8.21 (1991).

167. IOWA CODE § 490.821 (1991).

168. *Id.*

169. MODEL BUSINESS CORP. ACT ANN. § 8.21 comment (1991).

170. *Id.*

171. IOWA CODE § 490.822(1) (1991).

172. *Id.* § 490.822(2).

173. *Id.* § 490.822(1)-(2).

regular meeting is necessary.¹⁷⁴ The articles of incorporation or bylaws may provide other guidelines concerning notice of directors' meetings.¹⁷⁵

The liberal notice requirements for a directors' meeting contrast with the stricter notice requirements for a shareholder meeting.¹⁷⁶ Directors are expected to be more closely involved in corporate affairs, and their meetings are held more regularly and systematically than shareholder meetings.¹⁷⁷

Directors may waive notice of a meeting of the board by a written document executed before, at, or after the meeting in question.¹⁷⁸ Attendance at or participation in a meeting, however, will waive any required notice unless the purpose of attending is to object to the holding of the meeting.¹⁷⁹ In that case the director must state his objection at the beginning of the meeting or promptly on arrival, and must not vote for or assent to action taken at the meeting.¹⁸⁰

4. Quorum and Voting

Unless the articles of incorporation or bylaws provide otherwise, a quorum of a board of directors consists of either (1) a majority of the fixed number of directors;¹⁸¹ or (2) if the corporation has a variable-range size board, a quorum consists of the number of directors prescribed.¹⁸² If no number is prescribed, a majority of directors in office immediately before the meeting begins constitutes a quorum.¹⁸³ The articles of incorporation or bylaws may increase the quorum up to and including unanimity, but they may not authorize a quorum of less than one-third of the fixed or prescribed number of directors.¹⁸⁴

If a quorum exists when a vote is taken, the affirmative act of a majority of the directors present constitutes an act of the board of directors.¹⁸⁵

174. *Id.* § 490.822(2).

175. *Id.* § 490.822(1)-(2).

176. MODEL BUSINESS CORP. ACT ANN. § 8.22 comment (1991).

177. *Id.*

178. IOWA CODE § 490.823(1) (1991).

179. *Id.* § 490.823(2).

180. *Id.*

181. *Id.* § 490.824(1)(a).

182. *Id.* § 490.824(1)(b).

183. *Id.*

184. *Id.* § 490.824(2).

185. *Id.* § 490.824(3). Section 490.824(4) provides:

A director who is present at a meeting of the board of directors or a committee of the board of directors when corporate action is taken is deemed to have assented to the action taken unless one or more of the following occurs:

a. The director objects at the beginning of the meeting or promptly upon the director's arrival to holding it or transacting business at the meeting.

b. The director's dissent or abstention from the action taken is entered in the minutes of the meeting.

The articles of incorporation or bylaws, however, could require a greater number of votes to constitute an act of the board.¹⁸⁶

5. Committees

The new Act grants the board of directors the power to appoint and act through committees.¹⁸⁷ A committee receives its authorization from the board of directors or through the articles of incorporation or bylaws.¹⁸⁸ The board of directors, however, may not delegate certain functions to committees.¹⁸⁹

C. Officers

1. Required Officers

The officers of a corporation are those prescribed in the bylaws or appointed by the board of directors.¹⁹⁰ The new Act requires only a single officer.¹⁹¹ One officer shall be responsible for preparing the minutes of the meetings and for authenticating corporate records.¹⁹² Previously, Iowa law

c. The director delivers written notice of the director's dissent or abstention to the presiding officer of the meeting before its adjournment or to the corporation immediately after adjournment of the meeting.

The right of dissent or abstention is not available to a director who votes in favor of the action taken.

Id. § 490.824(4).

186. *Id.* § 490.824(3).

187. *Id.* § 490.825(1).

188. *Id.* § 490.825(4).

189. Iowa Code section 490.825(5) provides:

5. A committee shall not, however:

a. Authorize distributions.

b. Approve or propose to shareholders action that this chapter requires be approved by shareholders.

c. Fill vacancies on the board of directors or on any of its committees.

d. Amend articles of incorporation pursuant to section 490.1002.

e. Adopt, amend, or repeal bylaws.

f. Approve a plan of merger not requiring shareholder approval.

g. Authorize or approve reacquisition of shares, except according to a formula or method prescribed by the board of directors.

h. Authorize or approve the issuance or sale or contract for sale of shares, or determine the designation and relative rights, preferences, and limitations of a class or series of shares, except that the board of directors may authorize a committee or a senior executive officer of the corporation to do so within limits specifically prescribed by the board of directors.

Id. § 490.825(5) (1991).

190. *Id.* § 490.840(1). Individuals may simultaneously hold more than one office. *Id.* § 490.840(4).

191. *Id.* § 490.840(3).

required a "president, one or more vice presidents, a secretary, and a treasurer."¹⁹³

2. *Duties of Officers*

The new Act provides officers with authority to perform only those duties specified in or consistent with the bylaws.¹⁹⁴ The board of directors also may designate the duties of officers.¹⁹⁵

3. *Removal of Officers*

The removal provisions of the new Act are significantly different from prior Iowa law. The new Act states the "board of directors may remove any officer at any time with or without cause."¹⁹⁶ Prior Iowa law permitted the removal of officers by the board only when such action would serve the best interests of the corporation.¹⁹⁷

4. *Contract Rights of Officers*

Despite the fact officers serve at the will of the board of directors, officers may acquire contractual rights.¹⁹⁸ The appointment of an officer, however, does not create a contract right.¹⁹⁹ If an officer does acquire contract rights these rights, are not affected by the officer's removal or resignation.²⁰⁰

VI. RECORDS AND REPORTS

A. *Corporate Records*

The Iowa Business Corporation Act,²⁰¹ unlike prior Iowa law,²⁰² lists the types of records a corporation must keep²⁰³ or maintain.²⁰⁴ This list

192. *Id.*

193. Iowa Business Corp. Act, ch. 321, § 45, 1959 Iowa Acts 344, 363 (last codified at IOWA CODE § 496A.45 (1989) (repealed 1989)).

194. IOWA CODE § 490.841 (1991).

195. *Id.*

196. *Id.* § 490.843(2). The 1991 Iowa Legislature amended section 490.843(1) to provide that an officer of a corporation may resign by oral communication provided written notice is delivered to the corporation within twenty-four hours of such oral communication. 1991 Iowa Legis. Serv. 728 (West) (to be codified at IOWA CODE § 490.843(1) (1993)).

197. Iowa Business Corp. Act, ch. 321, § 46, 1959 Iowa Acts 344, 363 (last codified at IOWA CODE § 496A.46 (1989) (repealed 1989)).

198. IOWA CODE § 490.844 (1991).

199. *Id.* § 490.844(1).

200. *Id.* § 490.844(2).

201. Iowa Code section 490.1601 states:

should provide greater certainty to the Iowa corporation community and to practicing lawyers.

B. *Inspection of Records by Shareholders*

1. *Scope of Inspection Right*

A shareholder may inspect and copy certain of the above-described corporate records.²⁰⁵ The shareholder, however, must give the corporation

1. A corporation shall keep as permanent records minutes of all meetings of its shareholders and board of directors, a record of all actions taken by the shareholders or board of directors without a meeting, and a record of all actions taken by a committee of the board of directors in place of the board of directors on behalf of the corporation.

2. A corporation shall maintain appropriate accounting records.

3. A corporation or its agent shall maintain a record of its shareholders in a form that permits preparation of a list of the names and addresses of all shareholders in alphabetical order by class of shares showing the number and class of shares held by each.

4. A corporation shall maintain its records in written form or in another form capable of conversion into written form within a reasonable time.

5. A corporation shall keep a copy of the following records:

a. Its articles or restated articles of incorporation and all amendments to them currently in effect.

b. Its bylaws or restated bylaws and all amendments to them currently in effect.

c. Resolutions adopted by its board of directors creating one or more classes or series of shares, and fixing their relative rights, preferences, and limitations, if shares issued pursuant to those resolutions are outstanding.

d. The minutes of all shareholders' meetings, and records of all action taken by shareholders without a meeting, for the past three years.

e. All written communications to shareholders generally within the past three years, including the financial statements furnished for the past three years under section 490.1620.

f. A list of the names and business addresses of its current directors and officers.

g. Its most recent annual report delivered to the secretary of state under section 490.1622.

Id. § 490.1601.

202. Iowa Business Corp. Act, ch. 321, § 47, 1959 Iowa Acts 344, 363 (last codified at IOWA CODE § 496A.47 (1989) (repealed 1989)).

203. The term "keep" is used in the sense of permanent historical records. MODEL BUSINESS CORP. ACT ANN. § 16.01 comment, para. 1 (1984).

204. "The word 'maintain' is used to denote current records only" MODEL BUSINESS CORP. ACT ANN. § 16.01 comment, para. 2 (1991).

205. Iowa Code section 490.1602(1) provides:

1. A shareholder of a corporation is entitled to inspect and copy, during regular business hours at the corporation's principal office, any of the records of the corporation described in section 490.1601, subsection 5, if the shareholder gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy.

written notice at least five business days in advance.²⁰⁶ Such an inspection should occur at the corporation's principal office during business hours.²⁰⁷ This statute represents a significant change from prior Iowa law, which permitted only shareholders who had held their shares for at least six months or who held at least five percent of the outstanding shares to inspect "relevant books and records of account, minutes and record of shareholders."²⁰⁸

The right of a shareholder to inspect other specific corporate records, however, is significantly limited.²⁰⁹ A shareholder is authorized to inspect and copy additional records only if the shareholder shows a proper purpose and good faith, and provides a statement that specifies all desired records.²¹⁰ The records must be directly connected to the shareholder's purpose.²¹¹

The inspection rights granted by the new Act "shall not be abolished or limited by a corporation's articles of incorporation or bylaws."²¹² Furthermore, an agent or attorney representing a shareholder has the same inspection rights as a shareholder.²¹³

IOWA CODE § 490.1602(1) (1991); *see supra* note 200.

206. *Id.*

207. *Id.*

208. Iowa Business Corp. Act, ch. 321, § 47, 1959 Iowa Acts 344, 363 (last codified at IOWA CODE § 496A.47 (1989) (repealed 1989)).

209. Iowa Code section 490.1602(2) (1991) provides:

A shareholder of a corporation is entitled to inspect and copy, during regular business hours at a reasonable location specified by the corporation, any of the following records of the corporation if the shareholder meets the requirements of subsection 3 and gives the corporation written notice of the shareholder's demand at least five business days before the date on which the shareholder wishes to inspect and copy any of the following:

a. Excerpts from minutes of any meeting of the board of directors, records of any action of a committee of the board of directors while acting in place of the board of directors on behalf of the corporation, minutes of any meeting of the shareholders, and records of action taken by the shareholders or board of directors without a meeting, to the extent not subject to inspection under subsection 1 of this section.

b. Accounting records of the corporation.

c. The record of shareholders.

IOWA CODE § 490.1602(2) (1991).

210. *Id.* § 490.1602(3)(a)-(b); *see also* MODEL BUSINESS CORP. ACT ANN. § 16.02(c) comment, para. 3 (1991).

211. IOWA CODE § 490.1602(3)(c) (1991).

212. *Id.* § 490.1602(4).

213. *Id.* § 490.1603(1). The right to copy records includes, if reasonable, the right to have copies made, for which the corporation may impose a reasonable charge to cover the costs of necessary labor and materials. *Id.* § 490.1603(2).

2. Court-Ordered Inspection

Shareholders who are denied the right of inspection may seek a judicial order compelling the inspection.²¹⁴ If the court orders inspection and copying of corporate records, it also shall order the corporation to pay the shareholder's costs in obtaining the order, including attorney fees.²¹⁵ The court will not impose the costs if the corporation can prove its refusal was "in good faith because it had a reasonable basis for doubt about the right of the shareholder to inspect the records demanded."²¹⁶ This remedy is significantly different than the penalty under prior Iowa law, which was limited to ten percent of the value of the shareholder's shares and could not exceed five hundred dollars.²¹⁷

VII. FINANCIAL DISCLOSURE AND REPORTS TO SHAREHOLDERS

A. Financial Statements for Shareholders

The financial statements that a corporation must provide or make available to the shareholders under the new Act differ significantly from those required by the RMBCA. The Act requires corporations to *prepare* annual financial statements, which at a minimum must include a balance sheet and an income statement.²¹⁸ The corporation, at its own expense, must furnish these statements to a shareholder who requests them.²¹⁹ These financial statements need not be prepared by an accountant or in accordance with generally accepted accounting principles.²²⁰

In contrast, the provisions of the RMBCA require corporations to *furnish* shareholders with annual financial statements.²²¹ The RMBCA also requires the annual financial statements to include a statement of changes in shareholders' equity.²²² Finally, the RMBCA provides that financial statements which do not include a public accountant's report must be accompanied by a statement of the president or the person responsible for the corporation's records.²²³ Such a statement must: (1) state a reasonable belief the statements were prepared in accordance with generally accepted accounting principles or, if not, the basis for preparation; and (2) describe any ac-

214. *Id.* § 490.1604(1).

215. *Id.* § 490.1604(3).

216. *Id.*

217. Iowa Business Corp. Act, ch. 321, § 47, 1959 Iowa Acts 344, 363 (last codified at IOWA CODE § 496A.47 (1989) (repealed 1989)).

218. IOWA CODE § 490.1620 (1991).

219. *Id.*

220. *Id.*

221. MODEL BUSINESS CORP. ACT ANN. § 16.20(a) (1991).

222. *Id.*

223. *Id.* § 16.20(b).

counting methods used in preparation of the statement that differ from the preceding year.²²⁴

In view of the large number of small, closely held corporations in Iowa, the drafters of the new Act obviously believed the RMBCA requirements regarding financial statements were overly burdensome in the vast majority of situations.

B. Other Reports to Shareholders

The new Act requires a corporation to provide a written report to shareholders regarding transactions involving: (1) the indemnification or advances of expenses to a director in connection with a proceeding in which the corporation is a party, and (2) the issuance of shares for promissory notes or promises of future services.²²⁵

C. Annual Report to Secretary of State

Similar to prior Iowa law, the new Act requires each domestic and foreign corporation authorized to transact business in Iowa to deliver an annual report to the Secretary of State.²²⁶ The information required in the annual report²²⁷ must be current as of January 1 of the year in which the report is due,²²⁸ and must be filed with the Secretary of State by April 1 of each year.²²⁹ Contrary to prior Iowa law, changes of a registered agent and registered office may now be made on the annual report form.²³⁰

VIII. CONCLUSION

The new Iowa Business Corporation Act represents the result of the first comprehensive review of Iowa general corporation law in thirty years. This review will allow Iowa corporation law to reflect the modern ways corporations conduct their affairs.

The vast majority of the new Act parallels the RMBCA, particularly with respect to the procedure of corporate business and meetings. Therefore, Iowa practitioners will have the benefit of the RMBCA official comments, judicial interpretations from other states adopting the RMBCA, and law review and other scholarly writings. In sum, Iowa practitioners should find

224. *Id.* § 16.20(b)(1), (2).

225. IOWA CODE § 490.1621 (1991).

226. *Id.* § 490.1622.

227. Section 490.1622(1)(a)-(h) lists the information that the corporation must include in its annual report. *Id.* § 490.1622(1)(a)-(h).

228. *Id.* § 490.1622(2).

229. *Id.* § 490.1622(3).

230. *Id.* § 490.1622(5).

the new Iowa Business Corporation Act provides a modern, realistic, common sense approach to corporate law.